

119. Even after the statutory requirements have been met, the imposition of a forfeiture is made "[a]t the discretion of the Commission." 47 U.S.C. § 503(b)(3)(A). The Commission is afforded such discretion because, even if all the procedural requirements are met, a forfeiture is not necessarily the most appropriate sanction to be imposed for a particular wrongdoing or series of wrongdoings. See Conclusions, ¶¶ 247-62.

120. Situations where a forfeiture alone has been found to be an appropriate sanction include the following:

a. A licensee who committed only minor technical violations, and admitted each alleged violation, as well as taking corrective and remedial actions toward ensuring that such violations would not occur again was penalized by a forfeiture rather than disqualification. For inadvertent technical violations of this type, the Commission determined that the licensee's qualifications to be a licensee were not called into question. David A. Bayer, 7 FCC Rcd 5054 (1992).

b. Where a licensee was found to have committed only isolated instances of premature construction of facilities, and where there was no evidence of intentional failure to file applications or otherwise violate the Commission's rules, the Commission imposed a forfeiture rather than revoking the licensee's licenses. MCI Telecommunications Corp., 3 FCC Rcd 509 (1988).

c. Where a licensee merely made misrepresentations to the Commission regarding the coverage area of service, and such misrepresentations were made in a pleading that the licensee's attorney wrote and never gave to the licensee to review or approve before

filing, the Commission determined that a forfeiture and a short renewal term were proper sanctions. Abacus Broadcasting Corp., 7 FCC Rcd 6004.

121. The circumstances in the present case are aggravated as compared to those in Bayer, MCI or Abacus. Liberty has committed far more egregious violations of the Commission's rules and policies than the mere "inadvertent technical violations" that were present in Bayer. In fact, Liberty's violations include blatant disregard for the most basic of FCC rules -- the knowing activation and continued operation of unlicensed microwave facilities. See Mebane Home Tel. Co., 51 RR 2d 926. Similarly, Liberty did not commit just "isolated" violations of Commission rules and policies. MCI, 3 FCC Rcd 509, ¶ 48 & n.19. Rather, Liberty established a pattern of numerous and repeated instances of violations of the Commission's rules and policies over the course of several years. Supp. Findings, ¶¶ 23-39, 47, 52-60, 70-87; Findings, ¶¶ 54-88, 124-212, 227-36; Attachments A-G. Liberty also made numerous misrepresentations to the Commission in documents that it reviewed and approved prior to filing. Supp. Findings, ¶¶ 70-87; Findings, ¶¶ 154-212; TWCV Ex. 52 (Barr Deposition, 5/16/97, at 23-29 and Ex. 5 thereto).

122. Finally, in a case, such as this one, where employees who are in a position in which they must comply with Commission rules and policies are inadequately supervised such that the Commission's rules and policies are violated, revocation or denial of a license is warranted. See Patterson Shrimp Co., 29 FCC 1049, 1052 (1960) ("Supervision, adequate to make certain that rules and regulations of the Commission are complied with by subordinates, is a responsibility which cannot be shirked by a licensee."). The admitted lack of supervision over Mr. Nourain, and his demonstrated inability to perform his job in

compliance with the Commission's rules and policies, a situation which was known to Liberty's president, compels denial of the applications at issue in this proceeding. Findings, ¶¶ 68-70, 76-79; Price, Tr. 2164.

123. The facts of the present case simply do not fall within the parameters of the types of cases in which only a forfeiture is imposed. As TWCNYC has previously argued in its original Conclusions, the facts of this case are clearly within the classification of cases where the Commission has determined that disqualification or denial of Liberty's pending applications is an appropriate sanction, rather than those cases in which a forfeiture alone is imposed. See Findings, ¶¶ 247-82.

**IV. Liberty's Failure To Produce Its Internal Audit Report As Evidence In This Proceeding Must Result In The Presiding Judge Making An Adverse Inference With Regard To The Information Contained Therein.**

124. The absence of Liberty's Report from the record in this proceeding continues to be a source of frustration for TWCNYC and the Presiding Judge. Sippel, Tr. 2098 ("there's a very comprehensive internal audit report that might have saved a heck of a lot of time"). TWCNYC has consistently argued that the Report should be considered by the Presiding Judge at such time when he makes a decision on the merits of this case. Conclusions, ¶¶ 297-301.

125. On June 3, 1997, the D.C. Circuit rendered its decision regarding whether the Commission's decision denying Liberty's request for confidentiality of the Report should be upheld. The D.C. Circuit affirmed the Commission's decision, and denied Liberty's petition for review thereof, stating that Liberty's "challenges to the Commission's order are without merit." Bartholdi Cable Co. v. FCC, No. 96-1030, slip op. at 13 (D.C. Cir. June 3, 1997).

Liberty now has 45 days in which to petition the D.C. Circuit for rehearing, during which time the issuance of the D.C. Circuit's mandate is stayed. Rule 40(a), Fed. R. App. P.; Bartholdi Cable Co. v. FCC, No. 96-1030 (D.C. Cir June 3, 1997) (order withholding issuance of mandate). Presumably, Liberty will not provide TWCNYC or the Presiding Judge with a copy of the Report pending any further appeals it may pursue. Thus, this very relevant and important document remains absent from this proceeding.

126. Liberty's possession of the Report and failure to produce it in the context of this proceeding requires the application of the adverse inference rule. Generally, the adverse inference rule comes into play when a party with control of relevant evidence fails to produce the evidence for the tribunal. "The omission by a party to produce relevant and important evidence of which he has knowledge, and which is peculiarly within his control, raises the presumption that if produced the evidence would be unfavorable to his cause". Tendler v. Jaffe, 203 F.2d 14, 19 (D.C. Cir. 1953).

127. The reason for this general proposition is the belief that "the failure to bring before the tribunal some circumstance, document, or witness, when either the party himself or his opponent claims that the facts would thereby be elucidated, serves to indicate, as the most natural inference, that the party fears to do so, and this fear is some evidence that the . . . document, if brought, would have exposed facts unfavorable to the party." International Union, UAW v. National Labor Relations Board, 459 F.2d 1329, 1336 (D.C. Cir. 1972) (quoting J. Wigmore, Evidence § 284 (3d ed. 1940)). Courts have adopted Wigmore's appraisal by stating, "[u]nquestionably the failure of a defendant in a civil case to testify or offer other evidence within his ability to produce and which would explain or rebut a case

made by the other side, may, in a proper case, be considered a circumstance against him and may raise a presumption that the evidence would not be favorable to his position." United States v. Roberson, 233 F.2d 517, 519 (D.C. Cir. 1956); see also Tandler, 203 F.2d at 19; Townsend v. WMATA, 746 F. Supp. 178 (D.D.C. 1990).

128. There are four factors that must be present to invoke an adverse inference. First, it must appear that the documentary evidence exists or existed. Second, the suppressing party must have possession or control of the evidence. Third, the evidence must be available to the suppressing party, but not to the party seeking production. Fourth, it must appear that there has been actual suppression or withholding of evidence. Evans v. Robinson, 897 F.2d 966, 970 (8th Cir. 1990). "The unfavorable inference resulting from refusal to produce documents is applicable when the withholding party has been called on in the interest of truth to produce the documents." Id.

129. It is not required that a subpoena for the evidence have been issued in order for the adverse inference rule to apply. See International Union, UAW, 459 F.2d at 1338. The rationale behind not requiring a subpoena is that "a party will of his own volition introduce the strongest evidence available to prove his case. If evidence within the party's control would in fact strengthen his case, he can be expected to introduce it even if it is not subpoenaed." Id.

130. Adverse inferences are not allowed every time a party fails to produce relevant evidence in its possession. First, "if a party has good reason to believe his opponent has failed to meet his burden of proof, he may find no need to introduce his strong evidence." International Union, UAW, 459 F.2d at 1338 (citing NLRB v. A.P.W. Products Company

316 F.2d 899, 903 (2d Cir. 1963)). Second, "if the other party or the judge plays a role in the suppression of the evidence, the force of the inference is dissipated." Id. at 1338 (citing NLRB v. Drennon Food Products Co., 272 F.2d 23, 27 (5th Cir. 1959)). Finally, if a party has a Constitutional right to suppress the evidence, such as invoking the Fifth Amendment in a criminal trial<sup>8</sup> or a First Amendment right to keep the evidence private, the adverse inference rule is inapplicable. Id. at 1339.

131. The District Court of the District of Columbia in Johnson v. WMATA, suggests that the adverse inference rule is not applicable unless "there is evidence of 'evil intent, bad faith or willfulness.'" Johnson v. WMATA, 764 F. Supp. 1568 (1991) (quoting Vick v. Texas Employment Comm'n, 514 F.2d 734, 737 (5th Cir. 1975)). However, in both Johnson and Vick, the issue was not merely failure to hand over documents. Rather, the documents had been destroyed and could not be handed over. The Vick court ties the "evil

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<sup>8</sup>Although individuals have the right to take the Fifth Amendment in civil trials as well as criminal trials, "the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them: the Amendment 'does not preclude the inference where the privilege is claimed by a party to a civil cause.'" Baxter v. Palmigiano, 425 U.S. 308, 318 (1976) (quoting 8 J. Wigmore, Evidence 439 (McNaughton rev. 1961) (emphasis in original)); see, e.g., Cerro Gordo Charity v. Fireman's Fund Amer. Life Ins. Co., 819 F.2d 1471, 1480 (8th Cir. 1987); Roe v. Operation Rescue, 730 F. Supp. 656, 658 (E.D. Pa. 1989); McGill v. Mountinside Police Station, 720 F. Supp. 418, 423 (D.N.J. 1989); United States v. Bonanno Organized Crime Family, 683 F. Supp. 1411, 1444 (E.D.N.Y. 1988).

The reason for this rule was explained by the Third Circuit in RAD Services, Inc. v. Aetna Casualty and Surety Co., 808 F.2d 271, 274-75 (3d Cir. 1986) (quoting Trammel v. United States, 445 U.S. 40, 50 (1980)), "The distinction [between how invocation of the Fifth Amendment is treated in criminal trials rather than civil trials] derives from the desire for fact which impels the adversary process, and from the concomitant doctrine that privileges 'must be strictly construed and accepted only to the very limited extent that permitting a refusal to testify or excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth.'"

intent" requirement directly to destroyed documents, "The adverse inference to be drawn from the destruction of records is predicated on bad conduct of the defendant." Vick, 514 F.2d at 737. Although courts have often required bad faith before an adverse inference will be drawn from the destruction of evidence, only the Johnson court has suggested that bad faith is required for all adverse inferences. Despite the broad language of Johnson, that case did deal with the destruction of evidence and not merely a failure to turn over evidence in possession, and the opinion recognized that "whether to draw the inference is a matter of discretion for the fact finder." Johnson, 764 F.Supp. at 1580 (quoting International Union, UAW, 459 F.2d at 1339).

132. As a general rule, the judge or jury has the choice of making an adverse inference when a party fails to produce relevant evidence. However, the court in International Union, UAW found that the adverse inference rule was most applicable to administrative adjudications. "The rule requires that evidence which might otherwise be ignored be considered — viz., the evidence that one party has suppressed relevant data and therefore might have something to hide. This is precisely 'the kind of evidence on which responsible persons are accustomed to rely on in serious affairs,' and therefore precisely the type of evidence which the trier of fact should consider, whether he be judge, trial examiner, or member of a jury." International Union, UAW, 459 F.2d at 1340.

133. Courts have even suggested that adverse inferences may be mandatory. The court in International Union, UAW recognized that, although the decision maker has discretion in applying an adverse inference, "[a]dministrative agencies are, of course, required to obey the minimal requirements of rationality." Id. at 1339. As a result, if an

administrative law judge is not going to apply an adverse inference, he must justify his reasons for doing so. Id. at 1346. Failure to produce relevant evidence creates a presumption that the evidence was unfavorable, and "a presumption, of course is mandatory unless reasons affirmatively appear for not applying it." Id.; see also United States v. Roberson 233 F.2d 517 (5th Cir. 1956); Tendler, 203 F.2d at 19.

134. In the present case, all of the four required factors are present. The Report exists; Liberty has possession and control of the Report; the Report is available to Liberty, but not to TWCNYC or the Presiding Judge; and Liberty has actively sought to withhold the Report from this proceeding, claiming that the D.C. Circuit's grant of a stay pending review of the Commission's decision denying confidentiality of the Report protects the Report from disclosure in this proceeding. See Evans, 897 F.2d at 970.

135. Moreover, none of the situations in which an adverse inference is precluded can be found here. Liberty cannot claim that it has not produced the Report because it believes TWCNYC has failed to meet its burden of proof. See International Union, UAW, 459 F.2d at 1338. TWCNYC has no burden of proof in this proceeding; Liberty bears the entire burden of proof. Supp. Conclusions, ¶ 88; Conclusions, ¶¶ 237-38. Nor can Liberty assert that the Presiding Judge played a role in the suppression of the Report. See International Union, UAW, 459 F.2d at 1338. In fact, the exact opposite is true -- the Presiding Judge has expressed his frustration repeatedly throughout the course of this proceeding at not being privy to a copy of the Report. See Order, WT Docket No. 96-41, FCC 96M-265, at ¶ 8 & n.7 (rel. Dec. 10, 1996); Order, WT Docket No. 96-41, FCC 97M-12, at 2 (rel. Jan. 31, 1997); Order, WT Docket No. 96-41, FCC 97M-63, at n.8 (rel. April



21, 1997) ("This development [the Bureau's confirmation that there were no disclosures made to the Commission regarding any unauthorized service provisions by Liberty in 1993] raises once more the frustration at not having access to the Internal Audit Report."). Finally, Liberty has no constitutional right to suppress the Report, and there has been no destruction of the Report predicated on bad conduct. See International Union, UAW, 459 F.2d at 1339; Vick, 514 F.2d at 737.

136. In the context of this administrative proceeding, the Presiding Judge must make an adverse inference regarding the contents of Liberty's Report, or offer rational reasons for not doing so. See id. at 1346. Specifically, the Presiding Judge should presume the worst about the contents of the Report -- he should assume that the Report contains information that is either unfavorable to Liberty, or that the Report contains information that is favorable to Liberty, but in light of the evidence adduced in this proceeding, the veracity of the Report has become questionable. This second alternative is unfavorable to Liberty because it calls into question, yet again, Liberty's candor in dealing with the Commission. Since Liberty submitted the Report to the Commission voluntarily, it is unlikely that the contents thereof are wholly unfavorable to Liberty.<sup>9</sup> Because Liberty has elected not to submit the Report as part of this proceeding, the Presiding Judge should assume that it is

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<sup>9</sup>In fact, the Bureau granted Liberty's requests for STA after seeing the Report, which indicates that the information contained therein must not have been wholly unfavorable to Liberty.

unfavorable to Liberty because it is contradicted by evidence that has been developed in the hearing.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "R. Bruce Beckner", is written over a horizontal line.

Arthur H. Harding

R. Bruce Beckner

Jill Kleppe McClelland

Debra A. McGuire

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Washington, D.C. 20036

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Attorneys for Time Warner Cable  
of New York City and  
Paragon Communications

Dated: June 11, 1997

\53473

**CERTIFICATE OF SERVICE**

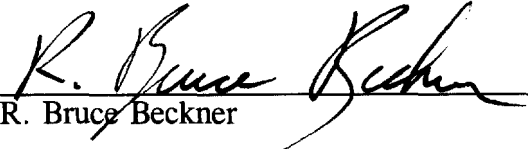
I, R. Bruce Beckner, hereby certify that a copy of the foregoing Supplemental Proposed Findings of Fact and Conclusions of Law of Time Warner Cable of New York City and Paragon Communications and the related Appendix was served, via overnight mail or hand delivery, this 11th day of June, 1997 upon the following:

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Washington, D.C. 20554

The Honorable Richard L. Sippel\*\*  
Administrative Law Judge  
2000 L Street, N.W., Suite 220  
Washington, D.C. 20554

  
\_\_\_\_\_  
R. Bruce Beckner

\*overnight mail  
\*\*hand delivery

BEFORE THE  
Federal Communications Commission  
WASHINGTON, DC 20554

**RECEIVED**

**JUN 11 1997**

Federal Communications Commission  
Office of Secretary

In Re Applications of )  
LIBERTY CABLE CO., INC. )  
For Private Operational Fixed ) WT DOCKET NO. 96-41  
Microwave Service Authorizations and )  
Modifications )  
New York, New York )

To: Hon. Richard L. Sippel, Administrative Law Judge

**APPENDIX TO SUPPLEMENTAL PROPOSED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW OF TIME WARNER CABLE OF  
NEW YORK CITY AND PARAGON COMMUNICATIONS**

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Attorneys for  
TIME WARNER CABLE OF NEW YORK CITY  
and  
PARAGON COMMUNICATIONS

Dated: June 11, 1997

## ATTACHMENTS

- A Liberty Application, Normandie Court to 180 East End, 510 E. 86th Street and 90 Riverside, FCC file no. 792860, signed March 25, 1993.
- B Liberty Application, Normandie Court to 302 E. 88th Street, FCC file no. 793917, filed May 13, 1993.
- C Liberty Application, Bristol Plaza to 175 E. 74th Street, 400 E. 59th Street, 812 Fifth Avenue and 116 E. 66th Street, FCC file no. 792858, filed April 1, 1993.
- D Liberty Application, Windsor Court to 200 E. 36th Street, FCC file no. 792859, signed March 26, 1993.
- E Liberty Application, Bristol Plaza to 150 E. 69th Street (Imperial House), FCC file no. 794171, filed May 21, 1993.
- F Liberty Application, River Tower to 333 E. 55th Street, FCC file no. 794172, filed May 21, 1993.
- G Liberty Application, Bristol Plaza to 25 Sutton Place, FCC file no. 794825, filed June 16, 1993.

**ATTACHMENT A**

UNITED STATES OF AMERICA FEDERAL COMMUNICATIONS COMMISSION  
GETTYSBURG, PA 17326

APPLICATION FOR STATION AUTHORIZATION IN THE  
PRIVATE OPERATIONAL FIXED MICROWAVE RADIO SERVICE

5/93

Approved by OMB  
5010-0064  
Expires 12/31/92  
See instructions for information  
regarding public burden estimate

**COPY**

FOR COMMISSION USE ONLY


FILE NUMBER: **C792860** SEND TO ASB: ☐ YES ☐ NO

FOR APPLICANT: Use FCC Form 402 Instructions dated December, 1989, or later for reference in completing form.

SECTION I-IDENTIFICATION INFORMATION

1. NAME OF APPLICANT: <b>LIBERTY CABLE CO., INC.</b>		3. CALL SIGN: (If application refers to an existing Part 94 station) <b>WNTP-939</b>	
2. MAILING ADDRESS: (No., street, city, state, ZIP code)  <b>215 E. 95th Street New York, NY 10128</b>		4. LICENSEE IDENTIFICATION NUMBER: (If previously assigned by the Commission) <b>005203-200</b>	
<input type="checkbox"/> Check here if you are a current Part 94 licensee and your mailing address, item 2, IS NOT the address on file.		5A. NAME OF PERSON TO CONTACT REGARDING APPLICATION: <b>Jennifer L. Richter, Esq.</b>	
		5B. TELEPHONE NUMBER OF THE CONTACT: <b>(202) 296-0600</b>	
6. TYPE OF APPLICANT: <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> ASSOCIATION <input type="checkbox"/> PARTNERSHIP <input checked="" type="checkbox"/> CORPORATION <input type="checkbox"/> GOVERNMENTAL ENTITY		7. CLASS OF STATION: (enter code) <b>FXO</b>	
		8. ELIGIBILITY RULE SECTION <b>90.75(a)(1)</b>	

9A. PURPOSE OF APPLICATION:

☐ NEW STATION ☒ MODIFICATION (SEE 9B & 9C) ☐ MODIFICATION WITH RENEWAL (SEE 9B & 9C) ☐ ASSIGNMENT OF AUTHORIZATION ☐ OTHER (SPECIFY) 

9B.	PATH	ACTION	OLD VALUE OF KEY ITEMS CHANGED							
	A	<input checked="" type="checkbox"/> ADD <input type="checkbox"/> CHANGE <input type="checkbox"/> DELETE	20		30		31		32	
	B	<input checked="" type="checkbox"/> ADD <input type="checkbox"/> CHANGE <input type="checkbox"/> DELETE	20		30		31		32	
	C	<input checked="" type="checkbox"/> ADD <input type="checkbox"/> CHANGE <input type="checkbox"/> DELETE	20		30		31		32	
	D	<input type="checkbox"/> ADD <input type="checkbox"/> CHANGE <input type="checkbox"/> DELETE	20		30		31		32	
	E	<input type="checkbox"/> ADD <input type="checkbox"/> CHANGE <input type="checkbox"/> DELETE	20		30		31		32	

9C. DESCRIBE ANY OTHER CHANGES:

10. WILL THIS SYSTEM BE USED TO PROVIDE A COMMUNICATIONS PRIVATE CARRIER SERVICE TO OTHERS? ☐ YES ☒ NO

SECTION II-ANTENNA INFORMATION

11. LOCATION OF TRANSMITTING ANTENNA STRUCTURE:

A. NUMBER AND STREET: (or other specific indication) <b>1692 3rd Avenue (Normandie Court)</b>		B. CITY: <b>New York</b>	
C. COUNTY: <b>New York</b>	D. STATE: <b>NY</b>	E. COORDINATES: (Degrees, Minutes, Seconds) LATITUDE: <b>40-47-03</b> N LONGITUDE: <b>73-56-54</b> W	

12A. IS THE ANTENNA TO BE MOUNTED ON AN EXISTING ANTENNA STRUCTURE? IF YES, ANSWER ITEMS 12B, C, D, & E. ☐ YES ☒ NO

12B. WILL THE ANTENNA INCREASE THE HEIGHT OF THE EXISTING STRUCTURE? ☐ YES ☐ NO  
IF YES, BY HOW MANY FEET? **FT**

12C. NAME OF CURRENT LICENSEE USING STRUCTURE:	FOR COMMISSION USE ONLY ASB:
12D. CURRENT LICENSEE'S RADIO SERVICE:	
12E. CURRENT LICENSEE'S CALL SIGN:	

13. FOR ANTENNA TOWERS (OR POLES) MOUNTED ON THE GROUND: ENTER THE OVERALL HEIGHT ABOVE GROUND OF THE ENTIRE ANTENNA (OR POLE) INCLUDING ALL ANTENNAS, DISHES, LIGHTNING RODS, OBSTRUCTION LIGHTING, ETC. MOUNTED ON IT **FT**

14. FOR ANTENNAS OR ANTENNA TOWERS (OR POLES) MOUNTED ON A SUPPORTING STRUCTURE SUCH AS A BUILDING, WATER TOWER, SMOKE STACK, ETC.

14A. WHAT IS THE OVERALL HEIGHT ABOVE GROUND OF THIS SUPPORTING STRUCTURE? INCLUDE IN THIS HEIGHT ANY ELEVATOR SHAFTS, PENTHOUSES, LIGHTNING RODS, LIGHTS, ETC., WHICH ARE NOT PART OF THE ANTENNA TOWER (OR POLE) **390 FT**

14B. HOW MANY FEET DOES THE ANTENNA TOWER (OR POLE) (INCLUDING ALL ANTENNAS, DISHES, LIGHTNING RODS, LIGHTS, ETC.) INCREASE THE HEIGHT OF THE SUPPORTING STRUCTURE IN ITEM 14A? IF THIS ANTENNA OR ANTENNA TOWER (OR POLE) DOES NOT INCREASE THE HEIGHT OF THE SUPPORTING STRUCTURE, ENTER ZERO (0) **5 FT**

14C. WHAT IS THE OVERALL HEIGHT OF THIS SUPPORTING STRUCTURE PLUS THE ANTENNA TOWER (OR POLE)? **395 FT**

15. GIVE THE GROUND ELEVATION ABOVE MEAN SEA LEVEL AT THE ANTENNA SITE **30 FT**

16A. NAME OF NEAREST AIRCRAFT LANDING AREA:  
**La Guardia**

16B. DIRECTION AND DISTANCE TO NEAREST RUNWAY:  
**E 4.0 miles**

17A. Has notice of construction been filed with the FAA on FAA Form 7460-1? If yes, answer items 17B, C, and D. <span style="float:right;"><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</span>	
17B. NAME UNDER WHICH YOU FILED:	17C. FAA REGIONAL OFFICE (City)
17D. DATE FILED:	

18. Would a Commission grant of your application be an action which may have a significant environmental effect as defined by Section 1.1307 of the Commission's Rules? See Instruction 18. If you answer yes, submit the statement as required by Sections 1.1308 and 1.1311. <span style="float:right;"><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</span>	19. If this is an existing station, enter the year it was first licensed:  <div style="text-align: center;">1992</div>
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### SECTION III—TECHNICAL INFORMATION

NAME OF ITEM	A	B	C	D	E
20. Frequency (MHz)	18145.0 — 18597.0				
21. Bandwidth (kHz) and Emission Type					
22. Type of Message Service					
23. Initial Baseband Channel Loading					
24. 10 yr. Projected Baseband Channel Loading					

### TRANSMITTER INFORMATION

NAME OF ITEM	A	B	C	D	E
25. Transmitter Operating Frequency Tolerance (%)					
26. Antenna Gain (dBi)					
27. Effective Isotropic Radiated Power (dBm)					
28. Beamwidth (Degrees)					
29. Height to Center of Final Radiating Element (Ft)					
30. Polarization					
31. Azimuth to Receive Site or Passive Repeater (PR) No. 1 (Degrees)					

### RECEIVE SITE INFORMATION

NAME OF ITEM	A	B	C	D	E
32. Receiving Station's Call Sign					
33. Receiving Antenna Gain (dBi)					
34. Median Received Signal Level at Input to the Receiver (dBm)					
35. Latitude N (Degrees, Minutes, Seconds)					
36. Longitude W (Degrees, Minutes, Seconds)					
37. Ground Elevation AMSL (Ft)					
38. Height to Center of Receiving Antenna (Ft)					

### PASSIVE REPEATER NO. 1 INFORMATION (IF ANY)

☐ If you have two or more passive repeaters on the same transmission path, check this box and answer items 39-46 on an additional FCC Form 402 or a separate sheet of paper for the second and successive passive repeaters.

NAME OF ITEM	A	B	C	D	E
39. Latitude N (Degrees, Minutes, Seconds)					
40. Longitude W (Degrees, Minutes, Seconds)					
41. Ground Elevation AMSL (Ft)					
42. Overall Height of PR Structure Above Ground (Ft)					
43. Dimensions (Ft X Ft) or Beamwidth (for dishes) (Degrees)					
44. Height Above Ground to Center of PR (Ft)					
45. Polarization					
46. Azimuth to Receive Site or Next PR (Degrees)					

### SECTION IV—CERTIFICATION

1. Applicant certifies that a copy of CFR 47, Part 94 has been retained for reference.
2. Applicant waives any claim to the use of any particular frequency regardless of prior use by licensee or otherwise.
3. Applicant will have unlimited access to the radio equipment and will control access and exclude unauthorized persons.
4. Neither applicant nor any member thereof is a foreign government or representative thereof.
5. Applicant will utilize type accepted radio equipment and antenna of correct specifications.
6. Applicant certifies that all statements made in this application and attachments are true and complete.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ATTACHMENTS ARE PUNISHABLE BY FINE AND IMPRISONMENT U.S. CODE TITLE 18 SECTION 1001

TYPED NAME:  <div style="text-align: center;">Bruce McKinnon</div>	TITLE:  <div style="text-align: center;">Executive Vice President</div>
SIGNATURE of individual, partner, official of a governmental entity, officer or authorized employee of a corporation, or officer who is also a member of the association. <div style="text-align: center;"> </div>	
DATE: <div style="font-size: 1.2em;">3/25/03</div>	

### NOTICE TO INDIVIDUALS REQUIRED BY PRIVACY ACT OF 1974 AND THE PAPERWORK REDUCTION ACT OF 1980

Sections 301, 303, and 308 of the Communications Act of 1934, as amended, (licensing powers) authorize the FCC to request the information on this application. The purpose of the information is to determine your eligibility for a license. The information will be used by FCC staff to evaluate the application, to determine station location, to provide information for enforcement and rule-making proceedings and to maintain a current inventory of licensees. No license can be granted unless all information requested is provided. Your response is required to obtain this authorization.



## FCC FORM 402 ENGINEERING DATA

## SECTION III-TECHNICAL INFORMATION

TRANSMITTER SITE NAME : 1692 3RD AVE, NY  
TRANSMITTER COORDINATES : 40 47 3.0 N  
73 56 54.0 W

20. FREQUENCY (MHZ): SEE EXHIBIT  
21. EMISSION: SEE EXHIBIT  
22. TYPE OF MESSAGE SERVICE: VIDEO  
23. INITIAL BASEBAND CHANNEL LOADING: 1  
24. 10 YR PROJ. BASEBAND CHANNEL LOAD: 1

## TRANSMITTER INFORMATION

25. OPERATING FREQ. TOL(%): 0.000500  
26. ANTENNA GAIN (DBI): 44.7  
27. EFFECTIVE RADIATED POWER (DBM): 25.7  
28. BEAM WIDTH (DEGREES): 0.9  
29. CENTER OF RADIATING ELEMENT (FT): 392.0  
30. POLARIZATION: V  
31. AZIMUTH TO NEXT STATION OR PR1(DEG): 161.331

## RECEIVER INFORMATION

RECEIVER SITE NAME : 180 EAST END, NY

32. CALL SIGN:  
33. RECEIVING ANTENNA GAIN (DBI): 48.2  
34. MEDIAN RECEIVED SIGNAL LEVEL (DBM): -42.9  
35. LATITUDE N. (DD MM SS): 40 46 36.0  
36. LONGITUDE W. (DDD MM SS): 73 56 42.0  
37. GROUND ELEVATION AMSL (FT): 17.0  
38. HT. TO RECEIVING ANTENNA (FT): 242.0

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## SUPPLEMENTAL INFORMATION

## TRANSMITTER INFORMATION

TRANSMITTER ANTENNA MAKE: CABLEWAVE SYSTEMS  
TRANSMITTER ANTENNA MODEL: PA4-190  
EQUIPMENT MAKE: HUGHES AIRCRAFT CO  
EQUIPMENT MODEL: D0063QAMLMOT18120

## RECEIVER INFORMATION

RECEIVING ANTENNA MAKE: CABLEWAVE SYSTEMS  
RECEIVING ANTENNA MODEL: PA6-190

## FCC FORM 402 ENGINEERING DATA

## SECTION III-TECHNICAL INFORMATION

TRANSMITTER SITE NAME : 1692 3RD AVE, NY  
 TRANSMITTER COORDINATES : 40 47 3.0 N  
 73 56 54.0 W

20. FREQUENCY (MHZ): SEE EXHIBIT  
 21. EMISSION: SEE EXHIBIT  
 22. TYPE OF MESSAGE SERVICE: VIDEO  
 23. INITIAL BASEBAND CHANNEL LOADING: 1  
 24. 10 YR PROJ. BASEBAND CHANNEL LOAD: 1

## TRANSMITTER INFORMATION

25. OPERATING TOL(%): 0.003000  
 26. ANTENNA GAIN (DBI): 44.7  
 27. EFFECTIVE RADIATED POWER (DBM): 22.7  
 28. BEAM WIDTH (DEGREES): 0.9  
 29. CENTER OF RADIATING ELEMENT (FT): 392.0  
 30. POLARIZATION: V  
 31. AZIMUTH TO NEXT STATION OR PR1(DEG): 174.571

## RECEIVER INFORMATION

RECEIVER SITE NAME : 510 E 86TH , NY

32. CALL SIGN:  
 33. RECEIVING ANTENNA GAIN (DBI): 48.2  
 34. MEDIAN RECEIVED SIGNAL LEVEL (DBM): -46.9  
 35. LATITUDE N. (DD MM SS): 40 46 31.0  
 36. LONGITUDE W. (DDD MM SS): 73 56 50.0  
 37. GROUND ELEVATION AMSL (FT): 40.0  
 38. HT. TO RECEIVING ANTENNA (FT): 230.0

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## SUPPLEMENTAL INFORMATION

## TRANSMITTER INFORMATION

TRANSMITTER ANTENNA MAKE: CABLEWAVE SYSTEMS  
 TRANSMITTER ANTENNA MODEL: PA4-190  
 EQUIPMENT MAKE: HUGHES AIRCRAFT CO  
 EQUIPMENT MODEL: D0063QAMLMOT18120

## RECEIVER INFORMATION

RECEIVING ANTENNA MAKE: CABLEWAVE SYSTEMS  
 RECEIVING ANTENNA MODEL: PA6-190

\*\*\* COMSEARCH \*\*\*

## FCC FORM 402 ENGINEERING DATA

## SECTION III-TECHNICAL INFORMATION

TRANSMITTER SITE NAME : 1692 3RD AVE, NY  
 TRANSMITTER COORDINATES : 40 47 3.0 N  
 73 56 54.0 W

20. FREQUENCY (MHZ): SEE EXHIBIT  
 21. EMISSION: SEE EXHIBIT  
 22. TYPE OF MESSAGE SERVICE: VIDEO  
 23. INITIAL BASEBAND CHANNEL LOADING: 1  
 24. 10 YR PROJ. BASEBAND CHANNEL LOAD: 1

## TRANSMITTER INFORMATION

25. OPERATING FREQ. TOL(%): 0.000500  
 26. ANTENNA GAIN (DBI): 48.2  
 27. EFFECTIVE RADIATED POWER (DBM): 32.2  
 28. BEAM WIDTH (DEGREES): 0.6  
 29. CENTER OF RADIATING ELEMENT (FT): 392.0  
 30. POLARIZATION: V  
 31. AZIMUTH TO NEXT STATION OR PR1(DEG): 274.861

## RECEIVER INFORMATION

RECEIVER SITE NAME : RIVERSIDE , NY

32. CALL SIGN:  
 33. RECEIVING ANTENNA GAIN (DBI): 48.2  
 34. MEDIAN RECEIVED SIGNAL LEVEL (DBM): -45.6  
 35. LATITUDE N. (DD MM SS): 40 47 10.0  
 36. LONGITUDE W. (DDD MM SS): 73 58 42.5  
 37. GROUND ELEVATION AMSL (FT): 51.0  
 38. HT. TO RECEIVING ANTENNA (FT): 205.0

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## SUPPLEMENTAL INFORMATION

## TRANSMITTER INFORMATION

TRANSMITTER ANTENNA MAKE: CABLEWAVE SYSTEMS  
 TRANSMITTER ANTENNA MODEL: PA6-190  
 EQUIPMENT MAKE: HUGHES AIRCRAFT CO  
 EQUIPMENT MODEL: D0063QAMLMOT18120

## RECEIVER INFORMATION

RECEIVING ANTENNA MAKE: CABLEWAVE SYSTEMS  
 RECEIVING ANTENNA MODEL: PA6-190

EXHIBIT #1

<u>FREQUENCY</u>	<u>EMISSION DESIGNATOR</u>
18145.0	5750A5C/250F3
18151.0	5750A5C/250F3
18157.0	5750A5C/250F3
18163.0	100A0
18169.0	5750A5C/250F3
18175.0	5750A5C/250F3
18181.0	5750A5C/250F3
18187.0	5750A5C/250F3
18193.0	5750A5C/250F3
18199.0	5750A5C/250F3
18205.0	5750A5C/250F3
18211.0	5750A5C/250F3
18217.0	5750A5C/250F3
18223.0	5750A5C/250F3
18229.0	5750A5C/250F3
18235.0	5750A5C/250F3
18241.0	5750A5C/250F3
18247.0	5750A5C/250F3
18253.0	5750A5C/250F3
18259.0	5750A5C/250F3
18265.0	5750A5C/250F3
18271.0	5750A5C/250F3
18277.0	5750A5C/250F3
18283.0	5750A5C/250F3
18289.0	5750A5C/250F3
18295.0	5750A5C/250F3
18301.0	5750A5C/250F3
18307.0	5750A5C/250F3
18313.0	5750A5C/250F3
18319.0	5750A5C/250F3
18325.0	5750A5C/250F3
18331.0	5750A5C/250F3
18337.0	5750A5C/250F3
18343.0	5750A5C/250F3
18349.0	5750A5C/250F3
18355.0	5750A5C/250F3
18361.0	5750A5C/250F3
18367.0	5750A5C/250F3
18373.0	5750A5C/250F3
18379.0	5750A5C/250F3
18385.0	5750A5C/250F3
18391.0	5750A5C/250F3
18397.0	5750A5C/250F3
18403.0	5750A5C/250F3
18409.0	5750A5C/250F3
18415.0	5750A5C/250F3
18421.0	5750A5C/250F3
18427.0	5750A5C/250F3
18433.0	5750A5C/250F3
18439.0	5750A5C/250F3
18445.0	5750A5C/250F3

EXHIBIT #1 CONTINUED

<u>FREQUENCY</u>	<u>EMISSION DESIGNATOR</u>
18451.0	5750A5C/250F3
18457.0	5750A5C/250F3
18463.0	5750A5C/250F3
18469.0	5750A5C/250F3
18475.0	5750A5C/250F3
18481.0	5750A5C/250F3
18487.0	5750A5C/250F3
18493.0	5750A5C/250F3
18499.0	5750A5C/250F3
18505.0	5750A5C/250F3
18511.0	5750A5C/250F3
18517.0	5750A5C/250F3
18523.0	5750A5C/250F3
18529.0	5750A5C/250F3
18535.0	5750A5C/250F3
18541.0	5750A5C/250F3
18547.0	5750A5C/250F3
18553.0	5750A5C/250F3
18559.0	5750A5C/250F3
18565.0	5750A5C/250F3
18571.0	5750A5C/250F3
18577.0	5750A5C/250F3

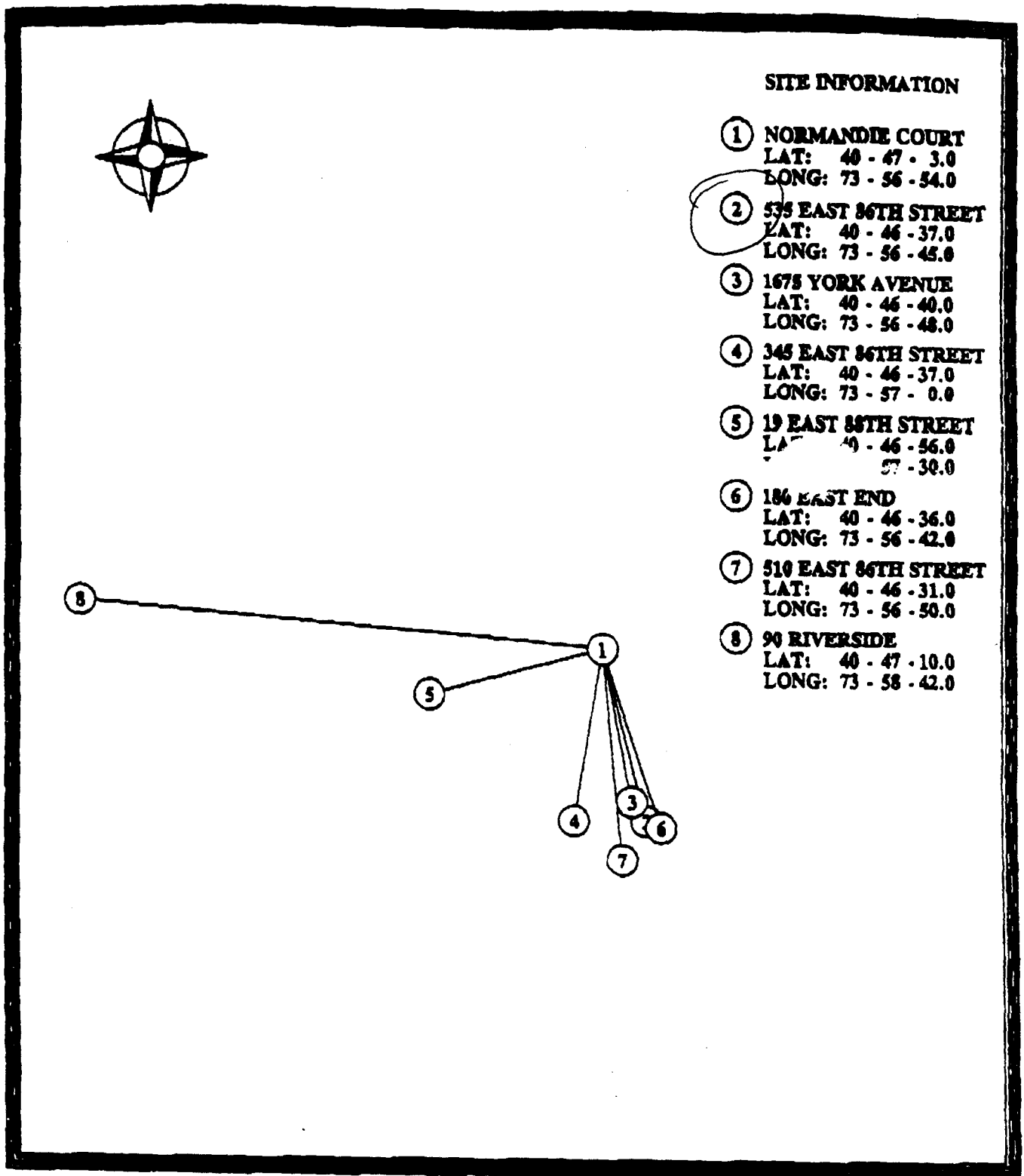
**STATEMENT OF ELIGIBILITY AND USE**

Applicant is engaged in the operation of a commercial activity as a provider of video entertainment programming to customers. Therefore, Applicant is eligible for operational-fixed microwave frequencies under section 90.75(a)(1) of the Commission's rules.

Applicant proposes to distribute its own products and services to customers using operational-fixed frequencies in the band 18,142-18,580 MHz. Pursuant to section 94.31(j) of the Commission's rules, the nature of the products and services to be distributed are described below. Applicant is the owner and operator of various private cable (SMATV) systems and proposes the point-to-point distribution of video entertainment material to private cable buildings and ultimately subscribers to the service. Section 94.9(a)(1) of the Commission's rules prohibits the distribution of video entertainment material to customers on frequencies below 21,200 MHz except as provided in Section 94.61(b) and Section 94.9(a)(2). Section 94.9(a)(2) authorizes a licensee to transmit any of its own products or services, including video entertainment programming, to any receiving location on frequencies in the 18,142-18,580 MHz band. Thus, Applicant's proposed use of the 18,142-18,580 MHz band frequencies is consistent with the Commission's rules.

# FUNCTIONAL SYSTEM DIAGRAM

WNTP-939  
LIBERTY CABLE CO., INC.



LIBERTY CABLE COMPANY  
18 GHZ CABLE SYSTEM



PATH A

PAGE: 2 OF 5

COMSEARCH  
11720 Sunrise Valley Drive  
Reston, Virginia 22091  
(703) 620-6300

LIBERTY CABLE CO., INC.

02/02/93

## MICROWAVE PATH DATA

STATION NAME	1692 3RD AVE NY	180 EAST END NY
<u>PATH STATUS</u>	PROPOSED OR PRIOR COORDINATED	
CALL SIGN		
LATITUDE (D-M-S)	40 47 3.0	40 46 36.0
LONGITUDE (D-M-S)	73 56 54.0	73 56 42.0
GROUND ELEV (FT-AMSL)	30	17
PATH AZIMUTH (DEG)	161.331	341.333
PATH DISTANCE (MILES)	0.546	
(KM)	0.879	
<u>ANTENNA</u>		
<u>PRIMARY</u> TX	CABLEWAVE SYSTEMS	NOT APPLICABLE
	PA4-190	
FCC CODE	CB0082	
GAIN (dBi)	44.7	
C/L (FT-AGL)	392	
<u>PRIMARY</u> RX	NOT APPLICABLE	CABLEWAVE SYSTEMS
		PA6-190
FCC CODE		CB0093
GAIN (dBi)		48.2
C/L (FT-AGL)		242
<u>DIVERSITY</u>		
GAIN (dBi)		
C/L (FT-AGL)		
<u>EQUIPMENT</u>	HUGHES AIRCRAFT CO	RECEIVE
	DOO63QAMLMOT18120	ONLY
FCC CODE	PENDING	
EMISSION	5750A5C/250F3/100AO	
LOADING	VIDEO	
STABILITY (%)	0.000500	
POWER (DBM)	-10.0	
RECEIVED LEVEL (DBM)		-42.9
EIRP (DBM)	25.7	
FIXED LOSSES (DB)	9.0	0.0
FREE SPACE LOSS (DB)	116.8	
<u>TRANSMIT</u>	18145.0V, 18151.0V, 18157.0V, 18163.0V, 18169.0V, 18175.0V, 18181.0V	
<u>FREQUENCIES</u>	18187.0V, 18193.0V, 18199.0V, 18205.0V, 18211.0V, 18217.0V, 18223.0V	
(MHZ)	18229.0V, 18235.0V, 18241.0V, 18247.0V, 18253.0V, 18259.0V, 18265.0V	
	18271.0V, 18277.0V, 18283.0V, 18289.0V, 18295.0V, 18301.0V, 18307.0V	
	18313.0V, 18319.0V, 18325.0V, 18331.0V, 18337.0V, 18343.0V, 18349.0V	
	18355.0V, 18361.0V, 18367.0V, 18373.0V, 18379.0V, 18385.0V, 18391.0V	
	18397.0V, 18403.0V, 18409.0V, 18415.0V, 18421.0V, 18427.0V, 18433.0V	
	18439.0V, 18445.0V, 18451.0V, 18457.0V, 18463.0V, 18469.0V, 18475.0V	
	18481.0V, 18487.0V, 18493.0V, 18499.0V, 18505.0V, 18511.0V, 18517.0V	
	18523.0V, 18529.0V, 18535.0V, 18541.0V, 18547.0V, 18553.0V, 18559.0V	
	18565.0V, 18571.0V, 18577.0V	



PATH B

PAGE: 3 OF 4

COMSEARCH  
11720 Sunrise Valley Drive  
Reston, Virginia 22091  
(703) 620-6300

LIBERTY CABLE CO., INC.

01/11/93

## MICROWAVE PATH DATA

<u>STATION NAME</u>	1692 3RD AVE NY	510 E 86TH NY
<u>PATH STATUS</u>	PROPOSED OR PRIOR COORDINATED	
CALL SIGN		
LATITUDE (D-M-S)	40 47 3.0	40 46 31.0
LONGITUDE (D-M-S)	73 56 54.0	73 56 50.0
GROUND ELEV (FT-AMSL)	30	40
PATH AZIMUTH (DEG)	174.571	354.572
PATH DISTANCE (MILES)		0.616
		0.992
<u>ANTENNA</u>		
<u>PRIMARY</u> TX	CABLEWAVE SYSTEMS	NOT APPLICABLE
	PA4-190	
FCC CODE	CB0082	
GAIN (dBi)	44.7	
C/L (FT-AGL)	393	
<u>PRIMARY</u> RX	NOT APPLICABLE	CABLEWAVE SYSTEMS
FCC CODE		PA6-190
GAIN (dBi)		CB0093
C/L (FT-AGL)		48.2
DIVERSITY		230
<u>FCC CODE</u>		
GAIN (dBi)		
C/L (FT-AGL)		
<u>EQUIPMENT</u>	HUGHES AIRCRAFT CO	RECEIVE
FCC CODE	DOO63QAMLMOT18120	ONLY
EMISSION	PENDING	
LOADING	5M75C3F/250F3/100AO	
STABILITY (%)	VIDEO	
POWER (DBM)	0.003000	
	-10.0	
RECEIVED LEVEL (DBM)		-46.9
EIRP (DBM)	22.7	
FIXED LOSSES (DB)	12.0	0.0
FREE SPACE LOSS (DB)		117.8
TRANSMIT FREQUENCIES (MHZ)	18145.0V,18151.0V,18157.0V,18163.0V,18169.0V,18175.0V,18181.0V,18187.0V,18193.0V,18199.0V,18205.0V,18211.0V,18217.0V,18223.0V,18229.0V,18235.0V,18241.0V,18247.0V,18253.0V,18259.0V,18265.0V,18271.0V,18277.0V,18283.0V,18289.0V,18295.0V,18301.0V,18307.0V,18313.0V,18319.0V,18325.0V,18331.0V,18337.0V,18343.0V,18349.0V,18355.0V,18361.0V,18367.0V,18373.0V,18379.0V,18385.0V,18391.0V,18397.0V,18403.0V,18409.0V,18415.0V,18421.0V,18427.0V,18433.0V,18439.0V,18445.0V,18451.0V,18457.0V,18463.0V,18469.0V,18475.0V,18481.0V,18487.0V,18493.0V,18499.0V,18505.0V,18511.0V,18517.0V,18523.0V,18529.0V,18535.0V,18541.0V,18547.0V,18553.0V,18559.0V,18565.0V,18571.0V,18577.0V	